

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LUIS FLORES

Claimant

VS.

MONFORT, INC.

Respondent
Self-Insured

)
)
)
)
)

Docket No. 204,529

ORDER

Claimant requested Appeals Board review of a preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish dated May 22, 1996.

ISSUES

The claimant raised the following issues for Appeals Board review:

- (1) The Administrative Law Judge exceeded his jurisdiction by denying medical treatment for the claimant.
- (2) The Administrative Law Judge exceeded his jurisdiction by denying a change of treating physician.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

At the preliminary hearing held before the Administrative Law Judge, claimant requested a change in treating physician and payment of a medical bill as an authorized medical expense. Claimant sustained a work-related injury while employed by the respondent on December 9, 1994. Respondent did not contest the compensability of the claim. Respondent had provided medical treatment for claimant's work-related injuries through three different physicians.

The initial question that will be addressed by the Appeals Board in this case is whether the Appeals Board has jurisdiction to review the subject preliminary hearing Order. Respondent argued that the Appeals Board does not have such jurisdiction. The Appeals Board has jurisdiction to review a preliminary hearing order if one of the specific issues listed in K.S.A. 44-534a, as amended by S.B. 649 (1996), is disputed. Jurisdiction is also granted if the appellant alleges that the administrative law judge exceeded his or her

jurisdiction in granting or denying the relief requested. See K.S.A. 44-551, as amended by S.B. 649 (1996). Neither of the issues raised by the claimant are contained in K.S.A. 44-534a, as amended by S.B. 649 (1996). Furthermore, the administrative law judge has authority pursuant to the preliminary hearing statute, K.S.A. 44-534a, as amended by S.B. 649 (1996), to grant or deny medical treatment. Additionally, K.S.A. 44-510(c)(1), as amended by S.B. 649 (1996), grants the administrative law judge authority to appoint another physician if the administrative law judge finds that the services of the current authorized physician are not satisfactory. In this case, the Administrative Law Judge found that the claimant had failed to prove that the physicians authorized by the respondent to treat claimant's injury were not satisfactory. This finding is within the Administrative Law Judge's discretion and authority. Accordingly, the Appeals Board concludes, at this juncture of the proceeding, it does not have jurisdiction to review this preliminary hearing Order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this appeal should be, and is hereby, dismissed and the Order of Administrative Law Judge Jon L. Frobish dated May 22, 1996 remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of July 1996.

BOARD MEMBER

c: Diane F. Barger, Emporia, KS
Terry J. Malone, Dodge City, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director